PP

v.

CHE KERMA MUHAMMAD

HIGH COURT MALAYA, IPOH
CHOONG SIEW KHIM JC
[CRIMINAL APPEAL NO: 42A-3-2007]
28 JANUARY 2010

CRIMINAL LAW: *Anti-Corruption Act 1997 - Section 11(a) - Accepting gratification - Presumption under s. 42(1) Anti-Corruption Act 1997 - Agreement to accept gratification proven by prosecution - Gratification presumed to have been corruptly agreed to be accepted - Whether presumption rebutted*

CRIMINAL LAW: *Anti-Corruption Act 1997 - Policeman soliciting gratification - Presumption that gratification received corruptly as inducement to settle drug case against complainant - Whether defence rebutted presumption*

CRIMINAL LAW: *Corruption - Corruptly accepting gratification - Presumption under s. 42(1) Anti-Corruption Act 1997 - Agreement to accept gratification proven by prosecution - Gratification presumed to have been corruptly agreed to be accepted - Whether presumption rebutted*

CRIMINAL PROCEDURE: *Appeal - Appeal against acquittal and discharge - Bribery and corruption - Whether prima facie case established - Police officer soliciting and accepting bribe - Whether accused rebutted statutory presumption in s. 42(1) of the Anti-Corruption Act 1997*

CRIMINAL PROCEDURE: *Sentence - Corruption - Principles - Public interest - Whether fact that gratification amount was small lessens gravity of offence*

EVIDENCE: *Adverse inference - Corruption charge - Failure of prosecution to tender tape recording of telephone conversation between complainant and accused - Whether adverse inference to be raised - Evidence Act 1950 s. 114(g)*

SP1 and SP3 were arrested in connection with suspected drug possession. They were brought before the respondent, an assistant investigating officer of the Narcotics Unit, who was assigned to investigate their arrest. SP1 and SP3 were released on police bail and required to report to the respondent for extension of their bail

on the dates specified by the respondent. They claimed that the respondent asked for various amounts from them to settle their drug case until on one occasion when they were asked to bring RM2,000 each that they decided to complain to BPR. SP3, who was the person named in the charge against the respondent and from whom the respondent allegedly accepted RM200, testified that the respondent informed him that he would not be charged and he was asked to give the respondent RM200 because he had helped SP3 to settle his case. The respondent was charged with accepting a bribe of RM200 from SP3 to close the drug related case against him, an offence under s. 11(a) of the Anti-Corruption Act 1997 ("the Act"). The respondent alleged that SP3 had followed the respondent into the toilet and simply put the money into his pocket out of appreciation to the respondent for having delayed the case and at that point the respondent was arrested by the BPR officers. The Sessions Court judge in acquitting the respondent held that the defence had succeeded in rebutting the presumption under s. 42 of the Act and hence the prosecution had failed to prove the charge beyond reasonable doubt. The prosecution appealed against the order of acquittal and discharge on the following grounds: (i) that the respondent had failed to rebut the s. 42 presumption; (ii) that the trial judge erred by stating that there was no reason for the respondent to obtain money from SP3; (iii) that the trial judge erred in finding that the respondent was entrapped by SP1 and SP3; and (iv) that the trial judge erred in deciding that an adverse inference was invoked by the prosecution's failure to produce any tape recording.

Held (allowing the appeal and substituting an order of conviction for the order of acquittal and discharge):

(1) Once it was proved by the prosecution that the gratification of RM200 was agreed to be accepted by the respondent, the gratification shall be presumed to have been corruptly agreed to be accepted as an inducement to help close the case against SP3 unless the contrary was proved in accordance with s. 42(1) of the Act. It was then for the respondent to prove and rebut by his defence that the RM200 was not corrupt money and that he had an explanation to prove his innocence. (para 8)

(2) The respondent failed to shake SP3's evidence in so far as the gratification of RM200 was concerned. Nothing was stated in the trial judge's grounds of judgment pertaining to any finding on the demeanour and/or credibility of SP3 or SP1. It was

clearly obvious that a gratification had been solicited from SP3 as an inducement to close or settle the case against him. (paras 20 & 21)

(3) The trial judge readily accepted the defence explanation for no apparent reason and without any attempt to assess and weigh it against the relatively unchallenged evidence adduced from SP1 and SP3. There was no reasonable and sustainable explanation or reason for SP3 to frame the respondent if it was truly believable that he was sincerely thankful for whatever assistance the respondent had rendered him after his arrest unless and except that a gratification had been solicited. As such the trial judge erred in finding that the respondent succeeded in rebutting the s. 42 presumption. (paras 26 & 27)

(4) The trial judge had invoked the adverse inference or presumption under s. 114(g) of the Evidence Act without any reason in the absence of any evidence that a tape recording was made when SP3 was told to telephone the respondent from the BPR office. None of the BPR officers who testified alluded to any tape recording in relation to the gratification of RM200 asked for by the respondent. (para 29)

(5) Public interest demands that any corrupt offender should not be dealt with too lightly which of course depends on the merits of each case. The amount of gratification was RM200 but that should not lessen the gravity of the offence. As such, the respondent was sentenced to one year imprisonment together with a fine of RM10,000 in default four months' imprisonment. (paras 35 & 36)

Case(s) referred to:
Thavanathan Balasubramaniam v. PP [1997] 3 CLJ 150 FC ***(refd)***
Attan Abdul Gani v. PP [1969] 1 LNS 12 HC ***(refd)***

Legislation referred to:
Anti-Corruption Act 1997, ss. 16, 42(1)
Evidence Act 1950, s. 114(g)

For the appellant - Saiful Hazmi Mohd Saad DPP
For the respondent - Shan Theivanthiran, M/s Thevin Chandran & Assocs

Reported by Amutha Suppayah

JUDGMENT

Choong Siew Khim JC:

[1] This was an appeal by the prosecution against the order of acquittal and discharge of the accused (the respondent in this appeal) at the close of the defence case. The learned Sessions Court judge held that the defence had succeeded in rebutting the s. 42 presumption of the Anti-Corruption Act 1997 and hence the prosecution had failed to prove the charge beyond reasonable doubt. It was noted that the defence was only called subsequent to an appeal by the prosecution against the respondent's acquittal after the close of the prosecution case when the same Sessions Court judge ruled that no *prima facie* case had been made out ("the first appeal"). The learned appellate judge set aside her order by allowing that appeal and the respondent was called upon to enter on his defence.

[2] The respondent was again acquitted after the Sessions Court judge heard his evidence in defence. In her grounds of judgment, she based her decision on four grounds:

a) She held that there was no reason for the respondent to ask for the gratification from SP3 (Khairul Azhar bin Ahmad Bakhtir) because based on the evidence adduced by the prosecution, SP3 knew from the outset that he would not be charged in court in relation to a case of drug possession. It followed that the issue of inducement did not arise and it was instead an entrapment of the respondent by SP1 (Mohd Sophian bin Musa, who was the person in actual possession of the drug) and SP3. In this context, she found the respondent had given an "innocent explanation" and rebutted the s. 42 presumption that he agreed to accept the gratification corruptly.

b) There was no evidence of gratification asked for by the respondent of SP1 and SP3. On the other hand, it was the respondent who told SP1 to get ready with his bail bond money in the event he was charged in court. SP1 was eventually charged according to SP2 (Supt. Abdul Rahman bin Hashim). In other words, she accepted the respondent's explanation that contrary to what SP1 and SP3 testified, any reference to money made by him was only in connection with bail bond money.

c) In a one liner without any reason given, she found that the failure by the prosecution to produce any tape recording gave rise to an adverse inference under s. 114(g) of the Evidence Act.

d) She rejected the submissions made by the prosecution in relation to the defence story as mere assumptions.

[3] In line with the grounds of appeal set out in the petition of appeal, the learned deputy public prosecutor submitted that:

a) the learned trial judge had erred in acquitting the respondent when he had in fact failed to rebut the s. 42 presumption (with reference to paras. 3.1, 3.2, 3.10 and 3.11 of the petition of appeal).

b) the trial judge erred by stating that there was no reason for the respondent to obtain money from SP3 as this was no longer an issue when the High Court had ordered the respondent to enter his defence after finding that the respondent had *prima facie* accepted a gratification of RM200.00 corruptly (with reference to paras. 3.3, 3.8 and 3.9 of the petition of appeal).

c) the trial judge erred in finding that the respondent was entrapped by SP1 and SP3 (with reference to paras. 3.5 and 3.6 of the petition of appeal).

d) the trial judge erred in deciding that an adverse inference was invoked by the prosecution's failure to produce the tape recording (with reference to para. 3.7 of the petition of appeal).

[4] This was the charge against the respondent:

> Bahawa kamu pada 10 September 2001, lebih kurang jam 1.00 tengahari, di dalam sebuah tandas, Cawangan Narkotik, Ibupejabat
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> Polis Daerah (IPD) Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak, sebagai ejen Kerajaan Malaysia, iaitu, sebagai seorang anggota Polis DiRaja Malaysia berpangkat Sarjan RF75138 dan bertugas di Cawangan Narkotik Ibupejabat Polis Daerah (IPD) Ipoh, secara rasuah menyetujui terima suatu suapan untuk diri kamu sendiri, iaitu, wang tunai RM200.00 (Ringgit Malaysia Dua Ratus) daripada Khairul Azhar bin Ahmad Bakhtir sebagai dorongan untuk melakukan suatu perbuatan yang berhubung dengan hal ehwal principal kamu, iaitu, Polis DiRaja Malaysia, iaitu, untuk membantu menutup kes terhadap Khairul Azhar bin Ahmad Bakhtir yang disiasat oleh kamu kerana beliau disyaki melakukan kesalahan memiliki ganja iaitu suatu kesalahan di bawah Seksyen 6 Akta Dadah Merbahaya 1952, dan dengan demikian, kamu telah melakukan kesalahan di bawah Seksyen 11(a) Akta Pencegahan Rasuah 1997 dan boleh dihukum di bawah Seksyen 16 Akta yang sama.

[5] Here were the facts based on the prosecution evidence. SP1 and SP3 were arrested in connection with suspected drug possession. SP1 testified that he was the one having the drugs which he threw into a drain when two policemen suddenly came upon them. They were brought before the respondent, an assistant investigating officer of the Narcotics Unit, who was assigned to investigate their arrest. SP1 and SP3 were released on police bail and required to report to the respondent for extension of their bail on the dates specified by the respondent. It was in their evidence that the respondent asked for various amounts from them to settle their drug case until on one occasion when they were asked to bring RM2,000 each that they decided to complain to BPR. P5 was the report lodged by SP1. On the part of SP3 who was the person named in the charge against the respondent and from whom the respondent allegedly accepted RM200, it was his testimony that the respondent informed him that he would not be charged and he was asked to give the respondent RM200 because he had helped him (SP3) to settle his case. The respondent further told him that SP1 would be the one charged in court. SP3's testimony on this is from pp. 45 to 47 of the appeal record:

> Sebelum tarikh sambung jamin berikutnya, pada waktu malam, OKT telah menelefon abang saya melalui handphone abang. OKT berpesan kepada abang saya menyuruh saya datang keesokan hari. Pada malam itu juga saya mendapat tahu dari abang saya. Pada masa itu saya di rumah dan abang saya keluar.
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> Keesokan harinya saya ada pergi ke balai bersama Sophian, iaitu Cawangan Narkotik Ipoh. Saya ada berjumpa dengan OKT ketika itu di biliknya. OKT meminta supaya Sophian tunggu di luar. Saya tiba di balai waktu pagi. Jadi hanya saya dan OKT yang berada di dalam bilik. Terdapat kerusi di luar bilik.
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> OKT memberitahu saya bahawa saya tidak akan dikenakan sebarang charge. Saya faham apa yang dia katakan iaitu tiada pertuduhan ke atas saya. Dia katakan salah seorang sahaja yang akan dituduh. OKT kemudian meminta wang dari saya kerana katanya dia telah menolong saya selesaikan kes.
>
> OKT meminta RM200.00. Sebelum ini OKT minta RM2,000.00. Saya cakap saya akan cari. OKT kemudian memberitahu saya satu tarikh untuk saya serahkan wang RM200.00 kepadanya. Dia memberitahu secara lisan tetapi saya tidak ingat tarikhnya. Selepas itu saya dan Sophian pun balik.
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> OKT ada beritahu bahawa Sophian yang akan dituduh di Mahkamah. RM200.00 adalah sebagai bayaran kerana dia telah menolong saya menyelesaikan kes saya di mahkamah.

[6] It came to pass that trap money P9A - I amounting to RM200 passed from SP3 to the respondent on 10 September 2001 based on the testimony-in-chief of SP3:

> Kemudian saya dan Sophian pun pergi ke Cawangan Narkotik dengan menaiki motosikal, lebih kurang jam 1.10 tengahari. Pegawai-pegawai BPR seramai dua orang ada mengikut saya, mereka menaiki kereta. Tiba di Cawangan Narkotik, saya pun pergi ke pejabat OKT. OKT ada di situ. Semasa saya masuk, saya dapati terdapat tiga orang tangkapan di dalam bilik OKT dan seorang polis wanita berada di kanan bilik. Saya dan Sophian pun masuk dan pergi ke sebelah meja OKT - pada masa itu tiga orang yang ditangkap masih berada di situ, duduk di hadapan meja OKT. Polis Wanita itu duduk di sebelah kanan pintu di mejanya sendiri. Setelah menghampiri meja OKT. OKT bertanya "ada" dan saya faham dan katakan "ada". Saya faham maksud ada iaitu duit RM200.00. Dia minta surat jamin dari saya. Saya ada serahkan surat jamin ini. OKT menulis tarikh 16.9.2001 dengan menggunakan pensil.
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> Catitan pensil 16.9.2001 - P8C
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> Selepas itu OKT menyuruh Sophian tunggu di luar bilik sementara saya disuruh ke tandas. Saya ada pergi ke tandas di blok hadapan, sebelah belakang di dalam kawasan balai.
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> OKT mengikuti di belakang. OKT masuk ke tandas, saya diminta oleh beliau ke satu bilik air untuk keluarkan wang. Sementara itu beliau pergi membuang air kecil. Setelah itu beliau datang ke tempat saya (bilik kecil). Saya masih di situ dan tidak keluar dan minta duit. Saya pun memberikan duit kepadanya. Saya berikan RM200.00 kepadanya, iaitu wang yang diserahkan oleh pegawai BPR. OKT mengambil wang dengan tangan kanan dan terus masukkan ke poket seluar.
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> Saya tanya "tidak payah kira ke" dan dia menjawab "tak payah". Saya tanya lagi "bila nak belanja saya makan" dan dia jawab "lain kali".
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> Saya keluar daripada tandas dan berjumpa Sophian yang berada di luar bilik OKT. Saya pun hisap rokok di hadapan bilik No. 2, di hadapan bilik OKT, masih dalam kawasan balai. Semasa saya keluar dari kawasan balai, saya berselisih dengan pegawai BPR. Setelah itu saya dan Sophian balik ke Pejabat BPR dengan menaiki motosikal dan menunggu di pejabat BPR.

[7] Whether there was a failure by the respondent to rebut the s. 42 presumption as argued by the appellant related directly to a defence that could be accepted as more likely than not true by the trial judge in line with what was held by the Federal Court in *Thavanathan Balasubramaniam v. PP* [1997] 3 CLJ 150 at p. 178:

> ... it was for the accused to give an innocent explanation which the Court considered more likely than not that it was true, ie, on a balance of probabilities, the test applied in civil proceedings. *PP v. Yuvaraj* [1969] 2 MLJ 89 PC.

[8] In the instant case, once it was proved by the prosecution that the gratification of RM200 was agreed to be accepted by the respondent, the gratification shall be presumed to have been corruptly agreed to be accepted as an inducement to help close the case against SP3 unless the contrary was proved in accordance with s. 42(1) of the Anti-Corruption Act 1997. That was held to be so in the first appeal when the High Court in deciding that there was a *prima facie* case made out by the prosecution called upon the respondent to enter his defence. It was then for the respondent to prove and rebut by his defence that the RM200 was not corrupt money and that he had an explanation to prove his innocence.

[9] The respondent in his defence gave this account. SP1 and SP3 were released on police bail on the day they were arrested pending the chemist report and instructions from the deputy public prosecutor (DPP). Their arrest was in May 2001 and their bail was extended from month to month until September. Before September, the chemist report was served on them but the DPP's instruction was still awaited.

[10] According to the respondent, SP1 and SP3 could be charged for possession of cannabis. Based on investigations, the drug was found near SP1. While waiting for the DPP's instruction, he advised SP1 and SP3 to get ready some money for the purpose of bail in the event they were charged in court. He told them the court bail could be in the region of RM1,000 to RM2,000. He reminded them of the bail money each time they came for extension of the police bail. He gave them his hand-phone number so that they could contact him before they came for bail extension because he could be in court or involved in any operation.

[11] On 10 September 2001, SP1 and SP3 telephoned in the morning to inform the respondent that they wanted to see him. They came although he told them that it was not necessary as the DPP's instruction had not been received. When they came at about 1pm, he was busy attending to four arrested persons. He told them that the investigation papers had not been returned and proceeded to extend their police bail to the following month. They subsequently left but when he came out from his room, one of them called out to him wanting to say something to him. He told them to wait outside because he had to attend to the other arrested persons.

[12] In the next breath the respondent said that he asked a colleague ("seorang kawan") to help look after the four suspects and when he passed by SP1 and SP3, he told them to wait for a while because he wanted to go to the toilet.

[13] He testified that when he was urinating, SP3 came into the toilet and said "... terima kasih kerana kes telah tangguh lama" while suddenly taking out something suspected to be money and putting it into his trouser pocket. The respondent said "kenapa ini" and SP3 replied "terima kasih kerana kes telah tangguh lama". The respondent told SP3 to wait as he was still urinating. SP3 however did not wait but left the toilet.

[14] After the respondent had finished urinating, he came out from the toilet and started to look for SP1 and SP3 in order to ask them why they had given him the money. While doing so, he received a call on his hand-phone and when he was answering the call, he was arrested by BPR officers.

[15] He further testified that the money was put into his right trouser pocket. He amplified what SP3 said to him ie, "terima kasih kerana kes tangguh lama dan ini duit minum". He knew it was money but he did not count the amount. He was told by the BPR officers to take out the money from his pocket which he did.

[16] He also said that whenever SP1 and SP3 saw him to extend their bail, he had never stated anything about money "untuk tujuan minum". Only standby money for bail was mentioned by him.

[17] In cross-examination, the respondent explained that he did not do anything when the money was put into his pocket because he was still urinating and he told SP3 to wait. He added that if he had known (it was money) he could have pushed it away but he did not know. The respondent's detailed account of what happened appear on pp. 90 to 95 of the appeal record.

[18] Based on the above, was the defence probable and more likely to be true as compared to the facts and evidence of the prosecution case? Did the defence succeed in rebutting the presumption with evidence that was reasonably sufficient to invite belief in its probable truthfulness? (as per *Attan Abdul Gani v. PP* [1969] 1 LNS 12; [1970] 2 MLJ 143 at p. 145).

[19] After having perused and considered the defence evidence, I was of the opinion that the learned trial judge had manifestly erred by arriving at a conclusion that there was no basis or reason for the respondent to ask for or solicit any gratification by holding that any reference to money was only in connection with bail bond money in the event that SP1 and SP3 were charged in court. Nowhere in her grounds did she consider the defence story in the light of SP3's testimony as here reproduced:

A OKT memberitahu saya bahawa saya tidak akan dikenakan sebarang charge. Saya faham apa yang dia katakan iaitu tiada pertuduhan ke atas saya. Dia katakan salah seorang sahaja yang akan dituduh. OKT kemudian meminta wang dari saya kerana katanya dia telah menolong saya selesaikan kes.

B OKT ada beritahu bahawa Sophian yang akan tuduh di Mahkamah. RM200.00 adalah sebagai bayaran kerana dia telah menolong saya menyelesaikan kes saya di Mahkamah.

[20] I had perused the appeal record thoroughly and I found that learned counsel for the respondent failed to shake SP3's evidence on C this material aspect before the trial judge in so far as the gratification of RM200 was concerned. Nothing was stated in the trial judge's grounds of judgment pertaining to any finding on the demeanour and/or credibility of SP3 or SP1.

D **[21]** In my considered view, the Sessions Court judge further failed to appreciate the significance of the date 16 September 2001 (P8C) which SP3 said the respondent wrote in pencil on P8 (being the "Surat Perjanjian Dan Jaminan Kepada Polis Diraja" or police bail in respect of SP3) after the respondent asked "ada" and SP3 replied "ada" with reference to whether SP3 brought the RM200 (see p. 49 E of appeal record). It was clearly obvious from here that a gratification had been solicited from SP3 as an inducement to close or settle the case against him in relation to his arrest together with SP1 for suspected drug possession based on what SP3 said the respondent told him that Sophian or SP1 would be the one charged F in court.

[22] As of 10 September 2001 SP3 was still subjected to police bail and until and unless the DPP specifically instructed so, SP3 could not be discharged based on the respondent's information alone and G that necessitated the extension of the police bail until 16 September 2001. The respondent was the investigating officer of the drug case that could implicate SP3 and he was in an authoritative position to state who stood a better chance of not being charged based on the investigation papers, the chemist report and the circumstances in which SP1 and SP3 were arrested. So long as his police bail (P8) H was extended, SP3 was still bound by his undertaking vide P8 to appear in a magistrate's court to answer to a charge arising from his arrest. Unless and until the DPP had instructed otherwise, there was still a cloud of suspicion or uncertainty hanging over SP3.

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[23] I hence could not comprehend the trial judge's finding that there was no reason or basis for the respondent to ask for the said gratification because according to her SP3 already knew that he would not be charged in court. This surely flew in the face of the requirement for SP3 to report to the respondent for extension of the police bail on assigned dates.

[24] On the respondent's version that he advised SP1 and SP3 to get ready bail bond money in the event they were charged in court, SP1 and SP3 consistently and steadfastly rejected and disagreed with suggestions put to them in cross-examination that they were asked by the respondent to get money for court bail. SP1 said:

> Saya tidak setuju bahawa saya diminta OKT untuk dapatkan wang untuk jaminan di Mahkamah.
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> (Page 32 of appeal record)
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> Saya tidak setuju bahawa apa-apa perbincangan antara saya dan Khairul dengan OKT adalah wang jaminan sekiranya saya dituduh di Mahkamah.
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> (Page 35 of appeal record)

[25] SP3 testified:

> Saya tidak dimaklumkan bahawa sekiranya SPI dituduh, jaminan mahkamah adalah RM1,000.00 - RM2,000.00. Saya pasti saya tidak dimaklumkan tentang hal ini.
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> Saya tidak setuju dengan cadangan peguam bahawa sebenarnya OKT meminta kami membawa wang RM1,000.00 sebagai wang jaminan kepada SPI.
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> (Page 53 of appeal record)
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> Saya tidak setuju dengan cadangan peguam bahawa OKT minta kami bawa wang tersebut adalah untuk jaminan tetapi ia untuk tujuan selesaikan kes.
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> (Page 54 of appeal record)

[26] When the Sessions Court judge was directed to call for the defence, she failed to consider the defence evidence against and in the light of the testimony of SP1 and SP3 particularly when they were cross-examined on the respondent's stand with regard to the issue of money that was asked for. It appeared to me that the

Sessions Court judge readily accepted the defence explanation for no apparent reason and without any attempt to assess and weigh it against the relatively unchallenged evidence adduced from SP1 and SP3 in this respect on which she found that the defence had rebutted the presumption that the respondent accepted the gratification corruptly.

[27] Going by the defence story, I also found it illogical for SP3 to run after and follow the respondent into the toilet and simply putting money into his pocket out of appreciation to the respondent for having delayed the case as contrasted with SP3's contention that the respondent asked money from him for helping him to close or settle his case. I was of the further view that there was no reasonable and sustainable explanation or reason for SP3 to frame the respondent if it was truly believable that he was sincerely thankful for whatever assistance the respondent had rendered him after his arrest unless and except that a gratification had been solicited. On a scale of comparison and contrary to the Sessions Court judge's decision, I found the explanation of the respondent to be less likely and less probably to be true and as such she had, in my opinion, erred in finding and deciding that the respondent had succeeded in rebutting the s. 42 presumption based on which he was acquitted and discharged.

[28] Based on the foregoing, it was not necessary for me to delve on the issue of entrapment when the evidence adduced by the prosecution was sufficiently credible to show that the respondent not only solicited the gratification but also accepted and received it when the trap money was recovered from the respondent's trouser pocket that would have justified the decision of the appellate judge in the first appeal. The Sessions Court judge had erred when she decided that there was no evidence of gratification solicited by the respondent.

[29] With regard to the issue of adverse inference or presumption under s. 114(g) of the Evidence Act on the part of the appellant in failing to produce any tape recording, it was patent that the trial judge had invoked it without any rhyme or reason in the absence of any evidence that a tape recording was made when SP3 was told to telephone the respondent from the BPR office. None of the BPR officers who testified including the investigating officer (SP6) alluded to any tape recording in relation to the gratification of RM200 asked for by the respondent.

[30] Any reference to a tape recording was only evident from p. 32 of the appeal record when SP1 was cross-examined:

> Pada 17.7.2001 dia minta RM1,000 dan pada 31.8.2001 dia minta RM2,000.00. En. Lokeman yang menyuruh saya membuat panggilan telefon iaitu selepas 31.8.2001 setelah laporan dibuat. Panggilan dibuat melalui telefon awam. Terdapat pita rakaman semasa panggilan dibuat. En. Yusof dari BPR yang memasang pita rakaman tersebut. En. Yusof yang mengendalikan pita rakaman itu. En. Azam yang mengajar saya tentang apa yang harus saya katakan. Dia suruh saya katakan bahawa saya ada RM500.00 setiap seorang. Saya tidak pasti tarikh bila tetapi selepas 31.8.2001.

[31] It was noted however that this was with specific reference to SP1 and had nothing to do with SP3 from whom the respondent asked for RM200 which formed the subject matter of the charge.

[32] Based on the totality of evidence, I found the trial judge's reasoning erroneous and at times incomprehensible. It was against the weight of the prosecution evidence that she had failed to evaluate properly.

Conclusion

[33] Based on the above and on the facts and the law applicable, I concluded that the accused had failed to raise any reasonable doubt on the prosecution case and accordingly, the appeal was allowed and an order of conviction was substituted for the order of acquittal and discharge that was set aside.

Sentence

[34] Mr. Shan Thevanthiran, counsel for the respondent, mitigated that the respondent was a first offender, sole bread winner and a family with young children. He urged this court to consider that the value of the gratification was not high being RM200. The learned deputy pressed for a deterrent sentence that would serve public interest and be reflective of the gravity of offences of this nature.

[35] In my opinion, public interest demands that any corrupt offender should not be dealt with too lightly which of course depends on the merits of each case. It is common knowledge that prevalent corruption which must be abhorred is a scourge to society and if left unchecked could even bring down a government particularly when committed by public officers, who driven by greed and lacking integrity, abused and capitalised on their positions to

A enrich themselves illegally. In the instant case, the amount of gratification was RM200 but that should not lessen the gravity of the offence when the penalty section (s. 16) provides for an imprisonment term of not less than fourteen days and not more than twenty years and a fine of not less than five times the sum
B or value of the gratification or ten thousand ringgit, whichever is the higher.

[36] I therefore considered it appropriate to sentence the respondent to one year imprisonment together with a fine of RM10,000 in default four months' imprisonment.

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